APPEAL NO. 010482

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on January 25, 2001. The hearing officer determined that the appellant's (claimant) "compensable injury" of _____, does not extend to or include an injury to the right foot and that the claimant does not have disability.

The claimant appeals, reiterating and, in some cases, expanding on, her testimony at the CCH, contending her compensable injury does include the right foot, and that she has had disability. The respondent (self-insured) responds, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a "trainer" house parent at a state agency facility. It is relatively undisputed that the claimant sustained a compensable injury (although not defined, it apparently included an injury to the claimant's "stomach" and perhaps right elbow) on _____, when a patient ran into her with an electric wheelchair. Although reporting was not an issue, much of the CCH dealt with what the claimant reported, who the claimant reported it to, and whether that person was a supervisor. In evidence is a statement from an "Assistant Residential Supervisor" which supports the claimant's testimony that shortly after _____, the claimant reported a foot and right toe injury, and was limping. The claimant was given modified duty working in the laundry and on _____, sustained another compensable injury (not at issue here) in a slip and fall on some ice. In a transcribed statement given to the self-insured's adjuster regarding the _____ injury, the claimant mentioned the September event and stated that she injured her arm and elbow.

The claimant apparently sought no medical attention until she became very ill and saw Dr. M on February 10, 1999. Dr. M's report of that date states "several sores developing on [claimant's] hands, arms and a large one on her right big toe for 24 hours causing severe necrosis . . . ." Dr. M's impression of the toe injury, at that time, was a "spider bite . . . with circumferential gangrene appearing lesion." There was no mention of a wheelchair incident. The claimant had in 1998 been diagnosed as a diabetic and the claimant's right toe and eventually the claimant's right leg below the knee had to be amputated.

Subsequent reports dated August 27, 1999, November 27, 1999, and January 16, 2001, from Dr. M attribute the claimant's toe injury to the wheelchair running over it on _____, working in "dirty conditions in the laundry," and a statement that the infection in the claimant's "big toe was not caused by an insect bite." The November 1999 report gave the opinion that "there is an 80% probability [claimant's] amputation was caused by the on-the-job injury of _____, and aggravated by the dirty environment in the

laundry . . . ." There was other evidence discussed by the hearing officer which he obviously considered.

Clearly the evidence was in conflict and subject to differing interpretations. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.) The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge